

Division of Behavioral Health Services

Office of the Deputy Director

150 North 18th Avenue, Suite 200
Phoenix, Arizona 85007
(602) 364-4558
(602) 364-4570 FAX
Internet: www.azdhs.gov

JANET NAPOLITANO, GOVERNOR
CATHERINE R. EDEN, DIRECTOR

TO: T/RBHA CEOs and Medical Directors

FROM: Ray Lederman, D.O.
ADHS/DBHS Acting Medical Director

Johnna Malici
Policy Office Manager

SUBJECT: **POLICY CLARIFICATION: GENERAL AND INFORMED CONSENT TO TREATMENT FOR PERSONS UNDER THE AGE OF 18**

DATE: May 2, 2005

This memorandum is intended to clarify the responsibilities of Tribal and Regional Behavioral Health Authorities (T/RBHAs) and their subcontracted providers in meeting the Arizona Department of Health Services/Division of Behavioral Health Services (ADHS/DBHS) policy requirements regarding general and informed consent to treatment for persons under the age of 18.

The purpose of the general and informed consent requirements for persons under the age of 18 is to ensure a caregiver's understanding of the risks and benefits of behavioral health services, including the risks associated with declining a specific service or procedure, and when applicable, to document the caregiver's signature indicating agreement to the delivery of behavioral health services. General consent is a one-time agreement to receive behavioral health services that is usually obtained from a person during the intake process at the initial appointment, and is always obtained prior to the provision of any behavioral health services. Informed consent is a process in which consent is obtained before the provision of a specific treatment that has associated risks and benefits and after an appropriate behavioral health representative has presented the facts necessary for a person to make an informed decision regarding whether to agree to the specific treatment and procedures. General consent and informed consent, when applicable, are not required in an emergency situation or pursuant to a court order.

According to ADHS/DBHS Provider Manual Section 3.11, *General and Informed Consent to Treatment*, the parent, legal guardian, or a lawfully authorized custodial agency must give general consent to treatment for persons under the age of 18, demonstrated by the parent, legal guardian, or a lawfully authorized custodial agency representative's signature prior to the delivery of behavioral health services.

This memorandum addresses questions that have arisen regarding when general and informed consent are required, who may give consent for behavioral health services for persons under the age of 18, what kind of documentation is required to verify authority to provide consent and for what types of behavioral health services certain individuals may provide general and informed consent.

1. When is *general consent* required for persons under the age of 18?

General consent is required before participating in and receiving non-specified (general) behavioral health services and is usually obtained during the intake process. General consent is not required for administrative functions associated with a behavioral health recipient's enrollment. General consent is also not required for persons under the age of 18 who are in need of immediate hospitalization or medical attention, or pursuant to a court order.

With regard to persons under the age of 18 who are taken into the custody of the Department of Economic Security/Child Protective Services (DES/CPS) and require an urgent response to address behavioral health needs, a signed general consent to treatment may be obtained from the DES/CPS caseworker to proceed with the provision of behavioral health services needed to stabilize the child.

2. When is *informed consent* required for persons under the age of 18?

Informed consent is required prior to the provision of specific services and procedures with associated risks and benefits, such as the following:

- Psychotropic medications;
- Electro-convulsive therapy (ECT);
- Use of telemedicine;
- Application for a voluntary evaluation;
- Research; and
- Procedures or services with known substantial risks and side effects.

Informed consent is not required in emergency situations involving persons under the age of 18 who are in need of immediate hospitalization or medical attention.

3. Who can provide general and informed consent for persons under the age of 18, and what documentation is required?

In non-emergency situations, the following individuals may provide general and informed consent to behavioral health services with the associated documentation:

Individual/Entity	Documentation
Parents	None required
Legal guardian	Copy of court order assigning custody
Relatives	Copy of power of attorney document
Other person/agency	Copy of court order assigning custody
DES/CPS Placements (for children removed from the home by DES/CPS), such as: <ul style="list-style-type: none"> ▪ Foster parents ▪ Group home staff ▪ Foster home staff ▪ Relatives ▪ Other person/agency in whose care DES/CPS has placed the child 	None required

Please note that DES/CPS placements (for children who have been removed from the home by DES/CPS) are not required to provide documentation prior to providing general and informed consent to treatment. If behavioral health providers doubt whether the individual bringing the child in for services is a person/agency representative in whose care DES/CPS has placed the child, the provider may ask to review verification, such as documentation given to the individual by DES indicating that the individual is an authorized DES/CPS placement. If the individual does not have this documentation, then the provider may also contact the child's DES/CPS caseworker to verify the individual's identity.

4. Are there limitations to the types of services that foster parents, group home staff, foster home staff, relatives and other persons and agencies, in whose care the child is currently placed by DES/CPS, can provide general and informed consent?

The individuals/entities listed above may give general and informed consent for the following behavioral health services:

- Evaluation and treatment for emergency conditions that are not life threatening; and
- Routine medical and dental treatment and procedures, including early periodic screening diagnosis and treatment services, and services by health care providers to relieve pain or treat symptoms of common childhood illnesses or conditions (including behavioral health services and psychotropic medications).

5. When parents voluntarily place their child (under the age of 18) with other individuals (e.g., a grandparent), do these other individuals have authority to provide general and informed consent?

Other individuals who may be taking care of the child do not have authority to provide general and informed consent unless the parent or guardian delegates powers regarding the care, custody or property of the child through a properly executed power of attorney (A.R.S. § 14-5104). According to A.R.S. § 14-5104, the time period for power of attorney may not exceed six months, and individuals with power of attorney may not consent to marriage or adoption of the child. Behavioral health providers would request a copy of the power of attorney document as indication of the person's authority to provide general and informed consent.

It is imperative that T/RBHA staff and subcontracted providers have knowledge of and perform in accordance with ADHS/DBHS policy. T/RBHAs must ensure that the information contained in this memorandum is communicated to all relevant internal and subcontracted personnel. If you have any questions regarding this policy clarification, please contact Johnna Malici at (602) 364-4652.